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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1169.

THE UNITED STATES, APPELLANT,

vs.

FRANK IVES.

APPEAL FROM THE COURT OF CLAIMS.

FILED JUNE 25, 1889.

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THE UNITED STATES, APPELLANT,

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1 In the Court of Claims, December term, 1888.

FRANK IVES
v.
THE UNITED STATES. } No. 16382.

I.—*Petition.—Filed Nov.* 24, 1888.—*J. R.*

To the honorable the Court of Claims:

The claimant, Frank Ives, respectfully represents:

The claimant is and has been for more than six years last past a commissioner of the circuit court of the United States for the district of Minnesota, and as such commissioner he did at various times hear and decide on criminal charges against various persons charged with violating the laws of the United States, and for portion of the per diems for hearing and deciding on criminal charges, extending from August, 1882, to March, 1888, he failed to make any charge in his current accounts because he was not aware that the same would be allowed, but subsequently being advised of the decisions of this court in the cases of Ravesies and Harper v. The United States, he presented an account for said charges amounting to three hundred and seventy dollars ($370) to the district court of the United States for the said district, by which the same was on the 10th day of August, 1888, duly approved. The charges in said account consist entirely of hearings on days upon which there were hearings of questions
2 involving judgment and discretion, and for which days no charge has ever previously been made in current accounts or paid, and of which said account the sum of five dollars and no more accrued more than six years before the beginning of this suit, leaving as not barred by the statute of limitations the sum of three hundred and sixty-five dollars ($365), which amount he claims.

No other action than as aforesaid has been had on this claim in Congress or by any of the Departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim or of any part thereof or interest therein has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant claims three hundred and sixty-five dollars ($365) and costs.

GEORGE A. KING,
Attorney for Claimant.

3 STATE OF MINNESOTA, *County of Polk, ss:*

Frank Ives, being duly sworn, deposes and says: I am the claimant in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge and belief.

FRANK IVES.

Subscribed and sworn to before me this 20th day of November, 1888.
[SEAL.] D. E. HATTLESTAD,
District Court Commissioner, Polk County, Minn.

4 II.—*General traverse.—Filed Dec'r* 12, 1888.

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

ROBERT A. HOWARD,
Assistant Attorney-General.

5 III.—*Findings of fact and conclusion of law.—Filed April* 22, 1889.

FINDINGS OF FACTS.

This case having been heard by the Court of Claims, the court, upon the evidence, find the facts to be as follows:

I.

The claimant has been a commissioner of the circuit court of the United States for the district of Minnesota from 1882 to the present time.

II.

The claimant's accounts for fees in hearing and deciding on criminal charges in a number of cases during the years 1883, 1884, 1885, 1886, 1887, and 1888, verified by his oath, were presented to said court in the presence of the district attorney, and an order approving the same was entered of record.

III.

The charges in these accounts amounted to $365, made up as follows: charges were made at $5 per day for fifty-six days, amounting to $280, for the actual examination and hearing of the complaining witness and such other witnesses as were produced by him prior to issuing warrants; charges were made for sixteen days at $5 per day, amounting to $80, for hearing motions for continuances, which were argued by the district attorney or defendant's counsel for such continuance; another charge, $5 in amount, is for one day on which there was an actual hearing and decision upon the sufficiency of bail. Said account also included another day, amounting to $5, said one day being in August, 1882, more than six years before the commencement of this suit, making the entire account amount to $370, whereof $365 is for services performed within six years previous to the commencement of this suit.

In 1866 the Department of the Interior, which then had supervision of commissioners' accounts, had occasion to construe this phrase in section 847, Revised Statutes:

"For hearing and deciding on criminal charges, five dollars a day for the time necessarily employed."

The Department thus ruled:

"The terms hearing and deciding embrace the commissioner's acts and rulings in the case, as well as the trial and determination of the issues of the facts, in the technical sense of those words."

6 A new rule was adopted in 1883 whereby they would all have been rejected if presented, and has been adhered to since, and said accounts were therefore not presented to the accounting officers of the Treasury.

CONCLUSION OF LAW.

Upon the foregoing facts the court find, as conclusion of law, that plaintiff recover $85.

IV.—*Opinion.*

DAVIS, J., delivered the opinion of the court:

This is a claim made by a United States commissioner for fees, which it is alleged would, under the rules now in force, be disallowed by the accounting officers of the Treasury if presented to them for payment. Eighty dollars of the charges are for hearing and deciding motions for continuance where motions were made and argued by the district attorney or defendant's counsel for such continuance. Another charge, $5 in amount, is for one day on which there was an actual hearing and a decision upon the sufficiency of bail.

These charges fall within previous rulings of the court and are allowed. (Harper vs. The United States, 21 C. Cls. R., 56; Ravesies vs. The United States, 23 C. Cls. R., 299.)

The remainder of the charges are for the actual examination and hearing of the complaining witness and such other witnesses as were produced by him preliminary to issuing the warrant; this plaintiff claims was in accordance with the following statute of Minnesota, the State where plaintiff resides:

"§ 141. (Sec. 132.) Proceedings on complaint made—warrant—its contents.—Upon complaint made to any justice by any constable or other person, that any such offence has been committed within the county, he shall examine the complainant on oath, and the witnesses produced by him, and reduce the complaint to writing, and cause the same to be subscribed by the complainant; and if it appears that such offence has been committed, the said justice shall issue his warrant, reciting the substance of the complaint, and requiring the officer to whom it is directed forthwith to arrest the accused, and to bring him before such justice, or some other justice of the same county, to be dealt with according to law; and, in the same warrant, may require the officer to summon such witnesses as shall be named therein, to appear and give evidence at the trial. (General Statutes of Minnesota, chap. 65.)"

This case differs from the cases of Harper and Ravesies in this: that the hearings were had prior to issuing a warrant, and for the purpose of deciding whether it should be issued.

Plaintiff contends that the difference is not material, and that the case at bar is not distinguishable from those already decided. He relies principally upon the following decision of the Secretary of the Interior, made in 1866, when that officer had supervision of commissioners' accounts. The Secretary held that "the terms hearing and deciding embraced the commissioner's acts and rulings in the case, as well as the trial and determination of the issue of fact in the technical sense of those words;" and he further relies upon the following statement in the opinion of this court in Harper's Case (21 C. Cls. R., 58):

"Without intending to lay down a rule which should govern all cases, the court is of opinion that acts merely clerical, or for which special fees are allowed, should not entitle the commissioner to the daily compen-
7 sation; but acts upon which counsel ought to be heard, if desired, which necessitates some investigation and decision, such as determining whether the complaint is of a nature to constitute an offense for which the party can be criminally held, whether a continuance should be granted when required by one of the parties, and in such case the amount and sufficiency of bail, come within the terms 'for hearing and deciding on criminal charges;' and the daily compensation should be allowed."

Plaintiff further urges that to comply with section 1014 of the Revised Statutes, as judicially interpreted (United States v. Rundlett, 2 Curtis, C. Cls. R., 41; Knox v. United States, 23 C. Cls. R., 367; affirmed 128 U. S. R., 230), it was necessary for him to hear these witnesses at the time he did, and to decide upon the sufficiency of the complaint before issuing his warrant.

Section 847, Revised Statutes, provides a fee of $5 a day "for hearing and deciding on criminal charges * * * for the time necessarily employed." This statute evidently contemplates an act in its essence judicial, not clerical. At the examination of complaining witness prior to issuing warrant there was no reason why counsel should be present; the defendant was not before the commissioner; there were no matters in controversy. That the intent of this provision of the statute was to provide compensation for a hearing and decision after warrant issued and returned, and with the defendant before the commissioner, is shown by the subsequent provision in the same section giving a fee "for issuing any warrant or writ." The service performed by plaintiff was this service; he issued warrants; and for performing that duty is entitled to a definitely specified fee, which must be held to include compensation for all labor necessarily incident to the duty of issuing a warrant or writ, such as hearing the statement of the complaining witness.

This item of charge is disallowed.

Judgment for plaintiff for $85.

8 V.—*Final judgment.*

At a Court of Claims held in the city of Washington, D. C., on the 22d day of April, A. D. 1889, judgment was entered as follows:

The court on due consideration of the premises find for the claimant

and do order, adjudge, and decree that the said Frank Ives do have and recover of and from the United States the sum of eighty-five dollars ($85.00).

9 VI.—*Defendants' application for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 22d day of April, 1889, in favor of claimant, the defendants, by their Attorney-General, on the 28th day of May, 1889, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
Ass't Attorney-General.

Filed May 28, 1889, and allowed in open court.

WILLIAM A. RICHARDSON,
Chief Justice.

10 In the Court of Claims.

VII.

FRANK IVES
vs.
THE UNITED STATES. } No. 16382.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the judgment of the court, of the application of the defendants for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this 22d day of June, A. D. 1889.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 1169. The United States, appellant, *vs.* Frank Ives. Court of Claims. Filed June 25, 1889.